

# **FREDERICK COUNTY BOARD OF APPEALS MEETING MINUTES FOR**

**Thursday, October 25, 2012.**

Alan Duke, Chair, called to order the regular meeting of the Frederick County Board of Appeals ("Board") for Thursday, October 25, 2012 at 7:00 p.m. in the 1st Floor Hearing Room in Winchester Hall. Present were Carole Jaar Sepe, Robert Fenimore, John Capoccia and Brad Dyjak. Also present were Kathy Mitchell, Assistant County Attorney, and Community Development Division staff Larry Smith, Zoning Administrator, Craig Terry, Planner and Erica Cooke, Recording Secretary.

*Official Minutes of the Board of Appeals' meetings are kept on file in the Community Development Division.*

## **Introductions**

The Chair stated the rules and procedures for the hearing and swore in all persons who expected to testify at the meeting.

## **Approval of Minutes**

On a motion from Mr. Capoccia, seconded by Mr. Dyjak, the Board approved the minutes of September 27, 2012 (Yea 4, Nay 0, Abstain 1- Fenimore)

## **Cases**

### **Discussion - B-11-02 – Liberty Towers LLC**

Staff received a letter from opposition to the application, requesting that the case be continued. Subsequent to receiving that letter, another letter was received rescinding the continuance request and asked that the case be heard.

The Board heard statements relative to the issue of continuance from opponents to the application, Mrs. Lori Rice and Mr. Brooks Bagley, as well as from Mr. Bruce Dean, Esq., representative for the Applicant.

The Board and Staff discussed the issues presented and Ms. Mitchell advised the Board of options on how to proceed in order to comply with due process requirements.

On a motion from Mrs. Sepe and seconded by Mr. Capoccia, the Board unanimously voted to proceed with hearing the case that evening as scheduled.

### **B-12-10 Grant County Mulch Inc.**

An application was filed requesting a special exception to expand a previously approved use (previous case# B-11-07) with additional acreage and grinder for wood waste recycling, located on the north side of Manor Wood Road (6702 Manor Wood Road, Tax Map 95, Parcels 81, 1137, 1139 & 1140). Zoned Agricultural.

Ms. Mitchell, for the purpose of full disclosure, announced that Mr. Fenimore had conducted independent research of issues relative to the case, specifically comparative grinders within the County and its effects on neighboring property owners. He also had verbal communication with the Applicant of this case, toured the subject facility, and shared his opinions with fellow Board members in the form of an email communication. A copy of the email communication was provided to all parties of interest and to the public in attendance at the hearing. She stated that the material would not be considered as part of the decision of the Board.

Mr. Duke announced a brief recess so that all parties and the public would have an opportunity to read the materials and decide whether the material was sufficient as disclosure or was there evidence to support recusal of Mr. Fenimore from the case.

*Break at 7:48 p.m. The hearing resumed at 7:55 p.m.*

There was no objection to Mr. Fenimore continuing to hear the case.

Mr. Duke noted that although Mr. Dyjak was not on the Board to hear the original case, he was in attendance in the audience, had reviewed all materials in the case and was familiar from the point of view of deciding on the current case.

*Break at 9:03 p.m. The hearing resumed at 9:12 p.m.*

On a motion from Ms. Sepe and seconded by Mr. Fenimore, the Board denied the use of the Grinder on Parcel 1 within the already approved special exception based on Ordinance Sections 1-19-3.210(B)(2) and (B)(3). (Yea 3, Nay 2- Duke, Capoccia)

Ms. Sepe made a motion to deny the expansion of the acreage based on the Ordinance Section 1-19-3.210(B)(2). The motion failed for lack of a second.

Mr. Capoccia made a motion to approve the expansion of the acreage, seconded by Mr. Fenimore.

Mr. Dyjak proposed an amendment to the motion to include the findings for the approval that the storage proportion meets the general criteria for special exception set forth in Ordinance Section 1-19-3.210 and specific criteria set forth in Ordinance Section 1-19-8.348, and adding the requirement of a buffer for the northern portion of the property for the storage area.

The Board approved the amendment to the motion. (Yea 4, Nay 1- Sepe)

The Board approved the amended motion. (Yea 4, Nay 1- Sepe)

#### **B-12-11 Springfield Manor Winery and Distillery**

An application was filed requesting a special exception to establish a Country Inn to be used with Farm Winery, located on the west side of Auburn Road, 1,200 ft. north of Baugher Road, south (11836 Auburn Road, Tax Map 32, Parcel 24). Zoned Agricultural.

On a motion from Mr. Capoccia and seconded by Mr. Dyjak, the Board unanimously approved the application as requested based on criteria set forth in Ordinance Sections 1-19-3.210, 1-19-5.310, 1-19-8.33, and 1-19-11.10, and the condition of 300 person maximum capacity for weddings and that music be relocated indoors after 10:00 p.m.

#### **B-11-02 Liberty Towers LLC- Court Remand Items**

As per Circuit Court Opinion dated April 20, 2012 and Circuit Court Remand Order dated June 11, 2012, the Board of Appeals shall examine the Applicant's 5 year plan and site plan drawings which were found by the Court to be insufficient in previous applications materials. The hearing was for the noted two items only.

On a motion from Ms. Sepe, seconded by Mr. Fenimore, the Board denied the application because the Applicant does not meet the criteria set forth in Ordinance Sections 1-19-3.332(C), requiring a 5 year plan "showing the proposed communications network within the County". (Yea 3, Nay 2- Capoccia, Dyjak)

#### **Closing**

Being no further business, the meeting adjourned at 11:32 p.m.

Respectfully submitted,

Erica Cooke  
Recording Secretary

                    /s/                      
Alan Duke, Chair